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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,386	07/17/2003	James G. Prather	MW014	4705
7590 05/17/2006			EXAMINER	
TERRELL P. LEWIS			SWENSON, BRIAN L	
UNIT #8 343 PALOS VERDES BOULEVARD			ART UNIT	PAPER NUMBER
REDONDO BEACH, CA 90277			3618	
			DATE MAILED: 05/17/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)				
	10/622,386	PRATHER ET AL.				
Office Action Summary	Examiner	Art Unit				
	Brian Swenson	3618				
The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply						
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).						
Status		·				
1) Responsive to communication(s) filed on <u>21 February 2006</u> . 2a) This action is FINAL . 2b) This action is non-final.						
,						
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.						
Disposition of Claims						
4)⊠ Claim(s) <u>1-23</u> is/are pending in the application.						
4a) Of the above claim(s) is/are withdrawn from consideration.						
5) Claim(s) is/are allowed.						
	6) Claim(s) 1 and 15-23 is/are rejected.					
 7) Claim(s) 2-14 is/are objected to. 8) Claim(s) are subject to restriction and/or 	r election requirement					
o) are subject to restriction under	oloollon roquirollioni.					
Application Papers						
9) The specification is objected to by the Examine						
10)☐ The drawing(s) filed on is/are: a)☐ accepted or b)☐ objected to by the Examiner.						
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).						
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).						
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.						
Priority under 35 U.S.C. § 119						
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 						
3. Copies of the certified copies of the priority documents have been received in this National Stage						
application from the International Bureau (PCT Rule 17.2(a)).						
* See the attached detailed Office action for a list of the certified copies not received.						
Attachment(s)						
1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)	4) Interview Summary Paper No(s)/Mail Da					
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 5) Notice of Informal Patent Application (PTO-152) 6) Other:						
Taper notajnitali Date						

DETAILED ACTION

1. Acknowledgment is made of the Request for Continued Examination (RCE) and the amendment entered on 21 February 2006 where:

a. Claims 1, 2, 11, 15, 16 and 23 have been amended.

An action on the merits of claims 1-23 follows below.

Claim Objections

2. Claims 15-21 are objected to because of the following informalities:

• "conventional" shopping carts have not been positively recited, leaving it unclear and indefinite as to what is encompassed by the comparison with the claimed shopping cart and the "conventional shopping cart". Further the use of quotes around the word—conventional—further add indefiniteness. The word conventional is known in the art; the use of quotes typically indicates an ad hoc or limited definition. In this case the use of quotes cause confusion, and it is unclear what "conventional" refers to in this case. If two carts have similar wheels are they considered "conventional"?

The examiner suggests removing the quotes around the word conventional.

 Clarification is requested for the limitation, "a handle member including two horizontally spaced apart, substantially parallel rods attached to said handle member..."

The "horizontally spaced" limitation in the claim is correct as written *per se*, but the examiner suggests the language: "a handle member including two *vertically* spaced apart, substantially parallel rods attached to the handle member..." which is more

representative of claimed invention. Figure 2, of the instant drawings, shows element 150 with a slight inclination giving the two parallel rods (elements 162,164) a slight horizontal separation. It is believed that the word "vertical" would a more clear description and would be in accord with the instant specification; for example language found in the in the abstract provides, "a pair of vertically spaced apart horizontal hinge rods are mounted to the handle member." See also claim 11.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 15-21 and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 recites the limitation "the lower of the two horizontally spaced rods" in line 14 of the claim. There is insufficient antecedent basis for this limitation in the claim (see Claim Objections, above, for the examiner's suggestion to correct this rejection).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 and 22, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,507,507 issued to Davidson.

Davidson, teaches in Figures 1-9 and respective portions of the specification of a: shopping cart (10) including:

a wheeled base (rails 22,24 and casters 14) having forward and rear portions;

a container (18B) supported by the base;

a gate (58) member pivotably attached (gate is pivotally attached to elements 64 which is connected) to a handle assembly (elements 28 and 26) mounted to the base rearwardly of the container and functionally arranged therewith to act as a closure for the rear of the container;

a pedestal (36) formed on the base for supporting the container thereon,

said pedestal being secured to the base at a location between the forward and rearward ends of the base (Figure 1);

said container being secured on the pedestal at a fixed location so that the lower rear of the container is disposed forwardly of the rear of the base (Figure 1).

In regards to claim 22, see Figure 3.

5. Claim 1 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,644,674 issued to Simard.

Simard, teaches in Figures 1-3 and respective portions of the specification of a: shopping cart (10) including:

a wheeled base (11 and casters 12) having forward and rear portions;

a container (23) supported by the base;

a gate (38) member pivotably attached (40) to a handle assembly (19) mounted to the base (handle assembly is integral with element 18, which is mounted to base 11) rearwardly of the container and functionally arranged therewith to act as a closure for the rear of the container (Figure 1);

a pedestal (elements 20 and 21) formed on the base for supporting the container thereon,

said pedestal being secured to the base at a location between the forward and rearward ends of the base (see Figure 1 where reference numeral 11 points);

said container being secured on the pedestal at a fixed location so that the lower rear of the container is disposed forwardly of the rear of the base (Figure 1).

In regards to claim 22, see Figure 3.

Allowable Subject Matter

6. Claims 2-14 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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7. Claims 15-21 and 23 would be allowable if rewritten or amended to overcome the

rejection(s) under 35 U.S.C. 112, 2nd paragraph and Claim Objections, set forth in this

Office action.

The primary reason for the indication of allowable subject matter in this case is

the inclusion of:

In regards to claim 2: a pedestal for supporting a lower rear portion of a basket

for a shopping cart, where the upper rear portion of the basket is hung from a handle

member extending upward from a base of the shopping cart;

In regards to claims 11 and 15: a shopping cart frame including a handle member

with two vertically spaced apart, parallel rods attached to the handle member; a gate

member pivotally attached to the lower of the two rods, a pedestal formed on the base

for supporting a container, where the rear of the container is closed by the gate

member;

in combination with the other elements recited, not found in the prior art of

record.

Response to Arguments

Applicant's arguments filed 27 June 2005 have been fully considered but they are

not persuasive in regard to the 35 U.S.C. 112, second paragraph rejection in regards to

claims 11 and 15-21. Specifically,

The limitation, "conventional" shopping carts is not of proper scope as a,

"conventional" shopping carts has not been positively recited leaving it unclear and

indefinite as to what is encompassed by the comparison with the claimed shopping cart

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and the "conventional shopping cart". Further the use of quotes around the word—conventional—further add indefiniteness. The word conventional is known, the use of quotes typically indicate an *ad hoc* or limited definition. There is no structure recited in the claim language to indicate as to what constitutes a: "conventional" shopping cart. If two carts have similar wheels are they considered "conventional"?

As disclosed above the removal of the quotes around the word—conventional—will obviate the Claim Objection, set forth above.

Applicant's arguments, with respect to the rejection(s) of claim(s) 1-22 under 35 USC 102 and 103 have been fully considered and but are most in view of the new ground(s) of rejection, detailed above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Swenson whose telephone number is (571) 272-6699. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

5/8-00

Brian Swenson Examiner Art Unit 3618

> CHRISTOPHER P. ELLIS SUPERVISORY PATENT EXAMINER TECHNOLOGY CENTER 3600